

b.) Remarks

Claims 1, 4-7, 9, 11 and 13-17 are cancelled in order to reduce the issues and expedite prosecution. Additionally, claims 2 and 3 are amended in order to recite the present invention with the specificity required by statute and claims 8 and 10 are amended in order to maintain their dependency. Lastly, new claims 18-21 are presented in order to more specifically recite various preferred embodiments of the present invention.

The subject matter of the amendment may be found in the specification as filed at page 5, lines 18-21, page 7, lines 24-28 and original claims 4, 7, 9 and 11. Accordingly, no new matter has been added.

Claims 1, 3-4, 13 and 15 are rejected under 35 U.S.C. §112, second paragraph, since the Examiner contends the term “improved oral disintegration” fails to particularly point out and distinctly claim the subject matter of the present invention. In response, solely in order to address the Examiner’s objection and expedite prosecution, claim 1 is cancelled without prejudice or disclaimer. Accordingly, this rejection is mooted.

Claims 1-12 are rejected under 35 U.S.C. §103(a) as being obvious over Ohta (U.S. Publication No. 2004/0047904) in view of Alkire (U.S. Patent No. 5,607,697). Also, claims 16-17 are rejected as being obvious over Ohta, in view of Akire and Crowley (U.S. Patent No. 4,301,149). As to these rejections, Applicants wish to aver that this application and Ohta, were, at the time this invention was made, owned by, or subject to an

obligation of assignment to, the same person.¹ Accordingly, Ohta is disqualified under 35 U.S.C. §103(c) as being owned by the same person.² See MPEP §706.02(1)(2)II.

Claims 13-15 are rejected under 35 U.S.C. §103(a) as being obvious over Alkire (U.S. Patent No. 5,607,697) in view of Murakami (U.S. Patent No. 6,287,596) and Tiwari (*AAPS Pharmsci*, Vol. 1, No. 3 (1999) article 13). This rejection is mooted by the foregoing cancellation of these claims.

Claims 1-9, 11, 13-15 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 35-36, 38-39, 41, 46-47, 49-50 and 52-53³ of copending application No. 10/250,863 in view of Alkire, Murakami and Tiwari. In response, Applicants enclose herewith a Terminal Disclaimer. A depository account payment of \$140.00 is being filed herewith to cover the fee under 37 C.F.R. §1.20(d). Any deficiencies may be charged to Deposit Account No. 06-1205. Accordingly, this provisional rejection is mooted as well.

Lastly, claims 1 and 13-15 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting over claims 1, 5-7 and 9 of copending application No. 10/546,439 in view of Alkire et al., Murakami et al. and Tiwari et al. This provisional rejection is mooted by the cancellation of claims 1 and 13-15.

In view of the above amendments and remarks, Applicants submit that all of the Examiner's concerns are now overcome and the claims are now allowable

¹ Of course, the rejection of claims 16 and 17 is mooted by their cancellation.

² In addition, the priority date of the present application is August 12, 2002 and December 25, 2002, whereas the publication date of Ohta et al. (US Publication No. 2004/0047904) is March 11, 2004, and Ohta's PCT application PCT/JP02/11769 was published on May 22, 2003 as WO 03/041698. Thus, Ohta et al. is also disqualified under 35 USC 102(e) on this basis as well.

³ As amended March 14, 2008.

condition. Accordingly, reconsideration and allowance of this application is earnestly solicited.

Claims 2, 3, 8, 10, 12 and 18-21 remain presented for continued prosecution.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

/Lawrence S. Perry/
Lawrence S. Perry
Attorney for Applicants
Registration No. 31,865

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200

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